

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION

Milwaukee, Wisconsin

**BARTON PROTECTIVE SERVICES, LLC, A WHOLLY
OWNED SUBSIDIARY OF ALLIED SECURITY, LLC**

Employer

and

Case 30-RC-6599

INDEPENDENT WISCONSIN SECURITY OFFICERS UNION

Petitioner

DECISION AND DIRECTION OF ELECTION¹

This is my determination as to the appropriateness of the unit sought by the Petitioner, as stated in a petition duly filed under Section 9(c) of the National Labor Relations Act (Act), as amended, and after a hearing was held before a hearing officer of the National Labor Relations Board (Board).² Petitioner seeks to represent a unit of:

All full-time and regular part-time employees employed as lead officers and security officers employed by the Employer at its Tomahawk, Wisconsin facilities; excluding account managers, assistant site supervisors, ID coordinators, sales employees, professional employees, clerical employees, seasonal employees, confidential employees, and supervisors as defined in the Act.

¹ The parties stipulated, and I agree, the record and evidence elicited during the hearing in Case 30-RC-6592, involving the same parties, be made part of this record. Additionally, I have taken administrative notice of the Decision in Case 30-RC-6592.

² Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Timely briefs from the Employer and Petitioner have been received and considered, and upon the entire record in this proceeding, the undersigned finds: 1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction. The parties stipulated, and I find, that the Employer, a Delaware Corporation with offices and places of business throughout Wisconsin, including in the Milwaukee area, Tomahawk, and Eau Claire, is engaged in the business of providing security guard services, and that during the past calendar year, a representative period, the Employer has provided services to Harley-Davidson valued in excess of \$50,000 and Harley-Davidson has in turn purchased goods and services in excess of \$50,000 from points directly located outside the State of Wisconsin. 3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act. 4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner asserts that the Employer's Tomahawk, Wisconsin contract sites are an appropriate unit because of the distance between Tomahawk and Eau Claire and the lack of interchange among employees between the two cities. The Employer contends that the appropriate unit must include the Eau Claire facilities because: the distance between the two is about 100 miles; under the newly merged company the Employer plans to provide the opportunity for interchange and transfer between the two cities; the four facilities (in the two cities) may become commonly supervised; and contract sites will be working under standardized company procedures and centralized labor relations.

I find that the Tomahawk facilities are an appropriate unit and that the Eau Claire facilities are not appropriate for inclusion in the Unit because the distance is too great between Tomahawk and Eau Claire; there is no evidence that there has been or will be regular interchange or transfers between the two cities; and even though there will be some standardized procedures and centralized labor relations functions, the Tomahawk and Eau Claire operations will retain significant autonomy. Accordingly, I find the following Unit is appropriate for purposes of collective bargaining:

All full-time and regular part-time employees employed as lead officers and security officers employed by the Employer at its Tomahawk, Wisconsin facilities; excluding account managers, assistant site supervisors, ID coordinators, sales employees, professional employees, clerical employees, seasonal employees, confidential employees, supervisors as defined in the Act, and those employees working at the Employer's Eau Claire, Wisconsin facilities.

The size of the bargaining unit is approximately 18 employees.

Background

The Employer, a security company, contracts with different companies to provide security services for its customer's facilities, referred to as contract sites. The Employer operates

throughout the country, and its operations are divided into divisions. Four Wisconsin facilities are at issue in this hearing, two in Tomahawk and two in Eau Claire. Additionally, the Employer operates 22 contract sites in and around Milwaukee, Wisconsin.³

In August 2004 Allied and Barton merged to become the above-captioned Employer. Due to the merger there has been a process of attempting to integrate the two companies. Therefore, there are some planned changes that will affect both the Tomahawk and Eau Claire sites.

A. The Tomahawk Operations

The Employer operates at two contract sites in Tomahawk; both are Harley-Davidson facilities. The contract sites are 1.56 miles apart and both are run by one account manager, Sean Haertle.⁴ Division Vice-President Sue Lancaster supervises Haertle and the 22 Milwaukee area contract sites from her Milwaukee, Wisconsin location.⁵

Due to the distance between Milwaukee and Tomahawk Haertle has significantly more autonomy than account managers in the Milwaukee area.⁶ Haertle is responsible for running the day-to-day operation of the Tomahawk contract sites. Additionally, Haertle is much more involved in the recruitment and hiring process than the Milwaukee metropolitan area account managers. Applicants for an opening at either Tomahawk contract site fill out applications

³ Since the record reflects some uncertainty about distance and driving time between locations, I will take administrative notice of those facts listed on www.mapquest.com. The distance and drive time between the two Tomahawk locations is 1.59 miles and 4 minutes, respectively. The distance and drive time between the two Eau Claire locations is 2.26 miles and 7 minutes, respectively. For the remaining distances and drive times the following locations were used, 111 East Kilbourn Avenue, Milwaukee (the location of Milwaukee Center Office), 611 Kaphaem Road, Tomahawk, and 5023 Venture Drive, Eau Claire. The distance and drive time between Tomahawk and Eau Claire are 135.46 miles and 2 hours and 44 minutes, respectively. The distance and drive time between Milwaukee and Eau Claire are 252.40 miles and 3 hours and 55 minutes, respectively. The distance and drive time between Milwaukee and Tomahawk are 246.22 miles and 3 hours and 56 minutes, respectively.

⁴ Haertle was formerly a lead officer at a Milwaukee metropolitan Harley-Davidson contract site.

⁵ Lancaster's job title is changing to District Manager with the merger of Allied and Barton.

⁶ Pursuant to the Decision in Case 30-RC-6592 the Milwaukee area sites were found an appropriate unit, specifically excluding the Tomahawk sites due to their distance and lack of interchange with the Employer's Milwaukee operations.

directly at the contract site. Haertle is then responsible for conducting interviews and making the hiring decisions.⁷ By contrast, applicants in the Milwaukee area fill out applications at the Milwaukee central office. Then, the Human Resources (HR) manager is responsible for interviewing and making the ultimate decision to hire. The only involvement account managers in the Milwaukee metropolitan area have in the process is that the applicant is usually brought to the contract site to see the facility before a final hiring decision is made. At that point in the process, the account manager can give the HR manager an opinion regarding the applicant, but the rest of the process is handled by the HR manager.

Once hired, the security officers at both the Tomahawk facilities report to Haertle. Security officers at the Tomahawk sites are paid \$9.00 an hour and receive an additional \$.50 an hour after 90 days. Thereafter, they receive an annual evaluation to determine future increases. Transfer opportunities in Tomahawk are posted at both Tomahawk locations.

The Milwaukee office has provided minimal support to the Tomahawk contract sites. While Lancaster supervises Haertle directly, she only visits the Tomahawk contract sites once a quarter due to the distance from Milwaukee and is in contact with him only every two weeks. By contrast the Milwaukee Metropolitan account managers receive weekly visits from Lancaster.

B. The Eau Claire Operation

The Employer operates two sites in Eau Claire, both are Nestle facilities. The two Eau Claire sites are 2.26 miles apart and both are run by the site supervisor, Herbert Bates, and an

⁷ In the previous record Lancaster testified that Haertle has more authority than other account managers with regard to determining overtime needs and discipline but the record does not contain specific examples.

assistant site supervisor, Dan Pahl.⁸ District Manager Dave Stewart supervises Bates and Pahl from his Minneapolis, Minnesota location.

Bates and Pahl have significant autonomy because of the distance between Minneapolis and Eau Claire.⁹ Bates, with Pahl's assistance, is responsible for interviewing and final hiring decisions, and also for issuing write-ups and disciplining. There was testimony that Bates and Pahl coordinate with, or seek advice from, Minneapolis HR and Stewart; however, there was no further testimony establishing what actions constitute coordinating or seeking advice or how often this is done.

The security officers at both the Eau Claire facilities ultimately report to Bates. However, it appears from the previous record that the assistant site supervisors handle the day-to-day operations. Therefore, the Eau Claire sites have an additional level of supervision for the officers than does Tomahawk.

Security officers at the Eau Claire facilities earn \$8.50 an hour. After 180 days they receive a review and can earn an additional \$.25 an hour. After the initial review employees receive annual reviews and may receive raises if the customer agrees. The employees work three shifts, seven days a week.

C. The Merger of Allied and Barton and its Effect on the Tomahawk and Eau Claire Contract Sites

Allied and Barton formally merged on August 2, 2004. Prior to the merger, Barton

⁸ There was testimony that the account manager position and the site supervisor positions were "similar" and "more or less interchangeable." There was no further testimony regarding the differences between the two titles. Additionally, the assistant site managers were stipulated as supervisors in Case 30-RC-6952 based on their authority to suspend and reassign and their involvement in the hiring and disciplinary process.

⁹ The distance and drive time between Eau Claire and Minneapolis is 92.03 miles and 1 hour and 38 minutes, respectively. This reflects a city-to-city drive time since no address was presented for the Minneapolis office. There was no testimony about how often Stewart visits the Eau Claire sites.

operated the Tomahawk sites and Allied operated the Eau Claire sites. Since the merger Wisconsin Division Vice-President Sue Lancaster continues to supervise the Tomahawk operation and Minneapolis Minnesota District Manager Dave Stewart continues to supervise the Eau Claire operations.¹⁰ Under the combined company, Lancaster and Stewart report to Vice-president and General Division Manager Brian O'Connell. O'Connell reports to Division President Pat McNulty. As a result of the merger the Employer is in a process of integrating the former companies, centralizing some labor relations functions, shifting the supervision of some contract sites, interchanging and transferring its officers and increasing its business.

Since the merger the Employer has been integrating several of its practices. It is currently standardizing certain procedures that will be administered at the Employer's headquarters in King of Prussia, Pennsylvania. Those procedures include common policies and procedures, employee handbook, payroll, auditing, invoicing, benefits, employee-related forms, health insurance, employee applications and training.¹¹ The Employer's goal is to standardize and integrate the above procedures by the end of March 2005.

A few of the common policies and procedures being integrated are the recruiting, interviewing, hiring and maintaining minimum employee standards. Although the Employer will be using a third party to manage its recruitment print and internet advertising, that party will not

¹⁰ There have been some discussions about Lancaster overseeing all of the contract sites in Wisconsin. However, the record does not establish that such a decision has been made, nor when it would be implemented if made. Lancaster testified that she recommended that she oversee the Eau Claire sites and Stewart testified that Division President Pat McNulty told him that Lancaster may take over the Eau Claire sites. While not controlling, I have considered that the Employer, in its post hearing brief in Case 30-RC-6592 argued "...the Tomahawk and Eau Claire locations should be excluded from the unit because of their geographic separateness from the other twenty-two Milwaukee locations. ... Notably, due to its location, the Eau Claire site is not even managed by the Milwaukee Division. In fact, it is the distance from Milwaukee to Tomahawk and Eau Claire that explain why Ms. Lancaster has never been to the Eau Claire site and only visits the Tomahawk site four times a year."

¹¹ It appears from the previous record that not all training was performed locally in the past. The record reflects as part of past training that Tomahawk officers were required to study and take a test on how well they knew their Harley Davidson facility. Lancaster administered that training to the officers at all Harley Davidson facilities, including those in the Milwaukee area.

specifically aid in the recruiting or provide names and candidates to the Employer.

The Employer has also implemented standardized procedures for interviewing and hiring candidates. However, there is no testimony that Haertle and Bates no longer have autonomy to interview and hire.¹² While it appears the Employer provides the hiring supervisors with a specific company (Choicepoint) to use for background checks, the hiring supervisors are still required to perform the remainder of an applicant's reference checks including employment, education and military background.¹³ The Employer will be using a third party to perform its drug testing.

The Employer also maintains minimum employee standards. Each customer emphasizes different requirements in its contract with the Employer and can require standards above the Employer's minimum. The record reflects the job requirements in Eau Claire and Tomahawk are less stringent than other sites. While Lancaster testified that the minimum standards applied to both Eau Claire and Tomahawk, there is no testimony about what the exact requirements are in Eau Claire and whether they differ from those in Tomahawk. Additionally, the previous record established that Tomahawk employees have less education and training than their Milwaukee counterparts. Further, based upon the desire of the customer and its contract with the Employer, the terms and conditions of contracts vary from site to site.

In addition to some standardized policies and procedures, the Employer plans to maintain certain files and centralize some labor relations functions. The billing, accounts payable, HR records, and benefits will be maintained in King of Prussia. However, personnel files, training

¹² Lancaster and Stewart are responsible for approving discharges and promotions. In the past HR made the discharge decisions but, due to the distance between Milwaukee and Tomahawk, Haertle has been responsible for the actual discharge of employees. There does not appear to be any change in this policy. Transfers are handled between the account managers with approval from HR, and any layoffs are customer driven.

¹³ The Employer's Exhibits reflect that there may be a possibility of outsourcing or centralizing the reference checks and providing reference information about past employees. However, it appears no decision has been made to do so.

records, disciplinary and commendation records will be maintained locally. Additionally, HR support will come from King of Prussia, rather than through the divisions.

Since the merger, Stewart told his Eau Claire clients that the Employer now has other officers licensed in Wisconsin that would be available in emergency situations. He further told the clients that he coordinated with the Milwaukee District Manager and that they could call on her to see if they could get officers there for emergency situations.¹⁴ Further, Lancaster testified that she and Stewart plan to post upcoming openings for Eau Claire and Tomahawk at the four sites in those two cities. However, to date there have been no such postings.

Finally, the Employer anticipates increasing contract sites in Northern Wisconsin. The record reflects that the Employer's Business Development manager had meetings in Wausau and Stevens Point in an effort to generate new business.¹⁵

Analysis

The Multi-Location issue

When making a determination on an appropriate unit, covering more than one location, the Board will look to factors such as: (1) similarity in employee skills, duties and working

¹⁴ While Stewart considers Tomahawk a natural site to draw upon he did not state that to his customers.

¹⁵ The following reflects distances and times from claimed additional contract sites, per map quest.

Distance and Drive Time from Wausau to Other Wisconsin Locations

From Wausau to:	Distance (in miles)	Drive Time
Tomahawk	38.97	49 minutes
Eau Claire	99.67	2 hours and 2 minutes
Milwaukee	210.68	3 hours and 15 minutes

Distance and Drive Time from Stevens Point to Other Wisconsin Locations

From Stevens Point to:	Distance (in miles)	Drive Time
Tomahawk	69.99	1 hour and 18 minutes
Eau Claire	130.67	2 hours and 32 minutes
Milwaukee	177.63	2 hours and 47 minutes

conditions; (2) geographical separation of facilities; (3) functional integration of the business, including employee interchange; (4) centralized control of management and supervision; and (5) collective bargaining history. *Carson Cable TV*, 795 F.2d 879, 884 (9th Cir. 1986)¹⁶

The issue in this case is whether the contract sites in Eau Claire are appropriately included in the petitioned-for contract sites in Tomahawk. I conclude they are not.

The officers in Tomahawk have similar skills, duties and working conditions. All of the officers work for the same customer, Harley Davidson, receive the same wages, are subject to the same evaluation procedures and report to the same supervisor, Haertle. The Eau Claire officers also enjoy similarities to the other officers in their city. The Eau Claire officers share similar employment conditions. They all work for Nestle, receive the same wages, share a common evaluation process and report to the same two supervisors, Bates and Pahl. While the officers in both cities provide similar security services, they do so for different customers and this requires knowledge, skills and training specific to the respective customers. For example, the Tomahawk officers took a test, also administered to other Harley Davidson officers in the Milwaukee area, that required them to specifically study their Harley Davidson facility. Thus, it is clear Tomahawk officers share skills, duties and working conditions which are distinct from the officers in Eau Claire.

¹⁶ The Employer cites *First Security Services Corp.*, 329 NLRB 235 (1999) for the standards to utilize in determining whether a single-facility presumption has been overcome. In that case the Board found that single-facility presumption was not rebutted, despite several centralized functions, transfers between facilities, and the close proximity of other facilities, 5 to 28 miles away. In the present case there is stronger evidence that the Tomahawk sites are an appropriate unit and should not include the Eau Claire sites. Additionally, the Employer cites *Pinkerton's Inc.*, 428 F.2d 479 (6th Cir. 1970). In that case the court refused to enforce the Board's determination that an appropriate bargaining unit consisted of 31 guards in the Mansfield area, excluding an additional 449 guards in the Columbus District. It is first noted that the Regional Director is bound by Board law. *Allstate Ins. Co.*, 332 NLRB 759, 768-9 (2000). It is further noted that the Employer in the present case is not seeking to include all of the officers in its division, as was the circumstance in *Pinkerton's*.

In addition to the different skills, duties and working conditions, the contract sites within the respective cities are within 2.26 miles of each other. In contrast, distance between the Eau Claire and the Tomahawk contract sites is 135.46 miles and the estimated drive time is 2 hours and 44 minutes.¹⁷ There is no evidence of current interchange (either temporary or permanent) and it is unlikely that any employee would choose to regularly travel such a substantial distance.¹⁸ Further, while Bates informed his client that he had more help available in emergency situations, he did not state to that client that help would come from Tomahawk.

In the event the Employer secures new customers in other areas of Wisconsin, any suggestion about how these sites might be serviced is purely speculative at this time.

In addition to the lack of interchange, the record reflects there have been no officer transfers between Eau Claire and Tomahawk despite the companies having merged almost six months ago.¹⁹ The testimony suggests that job opportunities in Eau Claire have not yet been posted in Tomahawk or vice versa but will be posted in the future. By contrast, job postings in Tomahawk have regularly been posted only at both Tomahawk sites.

Along with the lack of interchange and transfers between Tomahawk and Eau Claire, the record indicates that Haertle and Bates enjoy significant autonomy over local issues due to the distance between their facilities and the location of their respective supervisors. Haertle and

¹⁷ It is noted that the www.mapquest.com route is the same as the “common and accepted” route set forth in the record.

¹⁸ It is significant that Bates and Pahl have significant local autonomy due to their distance from Minneapolis, approximately 92.03 miles away. Additionally, record testimony reflects that at least one officer would not transfer from Tomahawk to Eau Claire because he would not want to move that far away from his family. This certainly suggests that an employee choosing to transfer from Tomahawk to Eau Claire or vice versa would likely have to move. If this is the case then an employee could just as easily move to those sites from any other Wisconsin contract site.

¹⁹ However, the record reflects that Haertle transferred from Milwaukee to Tomahawk for a promotional opportunity.

Bates are each primarily responsible for their facilities, including interviewing, hiring, disciplining and day-to-day operations. Unlike Tomahawk, Bates shares those day-to-day responsibilities with assistant site manager Dan Pahl. In the future it appears Haertle and Bates will follow some standardized practices with regard to the recruitment, hiring and training processes. However, it appears that each will retain significant local autonomy.²⁰ District Vice President Lancaster only travels to Tomahawk once every three months. By contrast, the Milwaukee Metropolitan account managers receive weekly visits from her. Furthermore, the record indicates that Lancaster is only in contact with Haertle about once every two weeks. The record does not reflect how often Stewart visits Eau Claire.

While O’Connell supervises both Lancaster and Stewart, it is significant that the Employer is not seeking to include all of the contract sites supervised by Lancaster, Stewart or both. In fact, in Case 30-RC-6592 the Union petitioned for all of the contract sites supervised by Lancaster. It was the Employer who sought to exclude the Tomahawk sites from the petitioned-for unit. Similarly, the Employer is not seeking to include the other contract sites supervised by Stewart in Minnesota and North Dakota. It therefore appears that the Tomahawk sites and Eau Claire sites are appropriately viewed as operating individually within their separate cities.

Conclusion

I, for all the above reasons, find that the Tomahawk contract sites are an appropriate unit and that the Eau Claire contract sites are excluded from the Unit based on their distance and lack of employee interchange with the Tomahawk contract sites.

²⁰ While not controlling, I have considered that the Employer argued, in its post hearing brief in Case 30-RC-6592 “unlike the Account Managers working at the Milwaukee sites, the Tomahawk Account Manager has complete autonomy to discipline employees, issue warnings, reprimands, and suspensions, as well as communicate decisions regarding the discharge of an employee.”

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Independent Wisconsin Security Officers Union.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access

to the list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer shall file with the undersigned, **two** copies of an election eligibility list, containing the **full** names (including first and last names) and addresses of all the eligible voters, and upon receipt, the undersigned shall make the list available to all parties to the election. To speed preliminary checking and the voting process itself, it is requested that the names be alphabetized. **In order to be timely filed, such list must be received in the Regional Office, Suite 700, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203 on or before February 23, 2005.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by March 2, 2005.**

Signed at Milwaukee, Wisconsin on February 16, 2005.

/s/ Irving E. Gottschalk
Irving E. Gottschalk, Acting Regional Director
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